IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

AHCOM, LTD., Plaintiff, v. HENDRIK SMEDING, LETTIE SMEDING, and DOES 1-15, inclusive, Defendants.	Case No. 07-1139 SC MEMORANDUM OF DECISION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. INTRODUCTION

This case concerns the alleged default by Nuttery Farms, Inc. ("NFI") on a series of contracts for sale of almonds to Plaintiff Ahcom, Ltd. ("Plaintiff" or "Ahcom"). Defendants Hendrik Smeding ("Mr. Smeding") and Lettie Smeding ("Mrs. Smeding") (collectively, "Defendants" or "the Smedings") are the sole shareholders of NFI. ECF No. 80 ("Defs.' Trial Br.") at 2. Plaintiff contends that it entered into a series of contracts to purchase a total of 580 tons of almonds from NFI, and that NFI defaulted on those contracts. ECF No. 127 ("Pl.'s Supp. Trial Br.") at 1. Plaintiff submitted the dispute to arbitration at the Waren-Verein in Germany and obtained an award of approximately $1.6 million. Defs.' Trial Br.

at 2. Plaintiff now seeks to pierce the corporate veil of NFI and enforce the arbitration award against the Smedings. Plaintiff asserts claims for: (1) alter ego; (2) confirmation of foreign arbitration award; and (3) breach of contract. See ECF No. 45 ("FAC").

The Court held a three-day bench trial, lasting from July 25, 2011 to July 27, 2011. The Court, by this Memorandum of Decision, issues its findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court concludes that the Smedings are not the alter egos of NFI. Accordingly, the arbitration award cannot be enforced against the Smedings in their personal capacity, and the Smedings are not liable for any alleged breach of contract by NFI.

II. FINDINGS OF FACT

A. The Parties

1. Ahcom is a United Kingdom limited liability corporation in the business of buying and selling dried fruit and nuts. Adam Hacking is Ahcom's sole shareholder. RT 9:10-14, 73:9-11 (Testimony of Adam Hacking (hereinafter "AH")).[1]

2. The Smedings are the sole shareholders of NFI. They began selling dried fruit and nuts as college students in approximately 1977. RT 254:3-18 (Testimony of Hendrik Smeding (hereinafter "HS")). In 1985, they incorporated their business under the name Nuttery Farms, Inc. ("NFI"). RT 256:8-9 (HS). NFI is a corporation involved in the purchase and sale of commodities,

[1] "RT" refers to the Transcript of Record from the trial.

namely nuts and dried fruits. Pl.'s Ex. 46 ("Hendrik Smeding Decl.").

B. Relevant Non-Parties

3. James Redfern ("Redfern") is the owner of S.J. Redfern, Ltd., a commodity brokerage firm. Redfern Dep. at 4:20-5:9.[2] Redfern has been employed as a broker in the edible nut markets since 1978. Id. at 5:15-17. He has acted as a broker for NFI since 2002. Id. at 7:14-16. He served as the broker for the transactions between Ahcom and NFI at issue in this dispute. Id. at 11:13-12:11.

C. The Disputed Transactions

4. Ahcom and NFI began doing business with each other in the sale of cashews and almonds in 1997 and have done millions of dollars in business with each other since then. RT 9:25-10:3, 76:7-24 (AH).

5. In early 2004, Redfern brokered a series of transactions (hereinafter "the disputed transactions") between NFI and Ahcom, which provided for NFI to sell to Ahcom several hundred metric tons of almonds for delivery beginning in fall 2004 and continuing through March 2006. RT 23:21-36:4 (AH); Pl.'s Exs. 27-34 ("Redfern Confirmations").

6. Mr. Smeding asked Redfern to serve as the broker for the disputed transactions. Redfern Dep. at 14:9-15. Mr. Smeding authorized Redfern to sell the almonds in the disputed transactions on behalf of NFI. Id. at 13:10-16.

[2] Redfern did not appear at trial. His deposition testimony was read into the record but was not transcribed. RT 138:12-17.

7. Redfern faxed confirmations of the disputed transactions (hereinafter "Redfern Confirmations") -- one for each twenty tons of almonds -- to Ahcom and NFI. RT 22:13-17 (AH), RT 298:15-299:24 (HS). Each Redfern Confirmation contained the following provision for arbitration before the Waren-Verein[3] in text prominently displayed as "Special Remarks":

> AS PER THE EXPORT CONTRACT FOR DRIED FRUIT, TREE NUTS AND KINDRED PRODUCTS, ADOPTED BY THE CALIFORNIA DRIED FRUIT EXPORT ASSOCIATION EFFECTIVE MARCH 1989. - ARBITRATION IN ACCORDANCE WITH THE RULES OF WAREN VEREIN - INTERNATIONAL PARTICIPATION PERMITTED - SHALL BE COMPETENT FOR FINAL SETTLEMENT OF ALL AND ANY DISPUTE ARISING THEREFROM.

See Redfern Confirmations.

8. NFI did not object to the Waren-Verein arbitration provision in the Redfern Confirmations. RT 311:19-22 (HS); Redfern Dep. at 34:2-23.

9. Every time that Redfern brokered a transaction for NFI, beginning in 2002, he sent a similar confirmation to NFI that provided for arbitration before the Waren-Verein. Redfern Dep. at 17:9-12, 34:2-23. NFI never objected to the inclusion of an arbitration provision in any confirmation prepared by Redfern. Id. at 34:2-23.

10. Mr. Smeding never expressed to Redfern that he believed he had to sign a written contract before becoming obligated to perform the transactions executed by Redfern. Id. at 17:22-18:1. NFI performed the majority of the contracts that

[3] The Waren-Verein is a trade association located in Hamburg, Germany. It regulates and promotes trade in various goods, including nuts and dried fruits. It also provides arbitration services for disputes involving these goods. RT 23:5-14 (AH).

Redfern brokered on its behalf. Id. at 21:4-15. No one from NFI ever contended that NFI was not bound by the contracts because it had not signed a written agreement. Id. at 20:6-12.

11. Michael Becker ("Becker"), another broker frequently used by NFI, specifically discussed with Mr. Smeding the availability of arbitration before the Waren-Verein. Becker Dep. at 21:4-23:22.[4] In 2000, Becker provided Mr. Smeding with an English translation of the arbitration rules relating to arbitration before the Waren-Verein. Id. Mr. Smeding told Becker that he felt protected by a Waren-Verein arbitration clause because the California Dried Fruit Export Association usually declared itself incompetent to arbitrate international disputes. Id. Mr. Smeding specifically asked Becker to include a Waren-Verein arbitration provision in his transaction confirmations whenever he executed a trade for NFI. Id.

12. Becker never received written authorization from Mr. Smeding to act as a broker for NFI. Becker Dep. at 19:15-20. Redfern did not specify whether he received written authorization to act as a broker for NFI, but his testimony suggests that all authorizations took place over the telephone. Redfern Dep. at 41:20-22. Becker testified that written broker authorizations are uncommon in the fruit and nut trading business. Becker Dep. at 19:14-20:20. Trading usually occurs quickly with communication taking place by telephone. Id.

13. Whenever Ahcom purchased almonds, its custom and practice was to send a signed confirmation entitled "Purchase

[4] Becker did not appear at trial. Excerpts of his deposition were read into the record but were not transcribed.

Contract" to the seller requesting that the seller confirm the terms of the deal. RT 15:6-11 (AH); see, e.g., Pl.'s Ex. 26 at 1 ("Purchase Contract"). These Purchase Contracts stated: "Please sign and return the enclosed copy to acknowledge your acceptance of the sales contract. Failure to do so within seven days shall constitute acceptance of the terms and conditions contained therein." Id. The Purchase Contracts further provided that all disputes would be arbitrated before the Waren-Verein. Id.

14. Whenever Ahcom did business with NFI prior to the disputed transactions, Ahcom sent a Purchase Contract to NFI, and NFI returned a signed copy to Ahcom. RT 56:13-17 (AH), 291:11-18 (HS). NFI never objected to the Waren-Verein provision in the Purchase Contracts. RT 56:23-57:9 (AH).

15. The parties dispute whether Ahcom sent Purchase Contracts to NFI for the disputed transactions. RT 16:14-21, 67:15-20 (AH); RT 292:24-293:3, 314:24-315:16 (HS). Copies of Purchase Contracts for the disputed transactions were received into evidence, but these copies are not signed by NFI. See Pl.'s Exs. 24-32, 34.

16. In 2004, several of NFI's suppliers defaulted on contracts, refused to sell to NFI, or restricted the amount of product they would sell to NFI, preventing NFI from being able to execute purchase contracts sufficient to cover its sales contracts. RT 287:15-288:7 (HS).

17. In the fall of 2004, Ahcom sent NFI shipping instructions in anticipation of the first scheduled delivery of almonds. NFI did not respond. RT 39:10-20, 54:3-5 (AH). NFI did

not make the first scheduled delivery in October 2004. Pl.'s Ex. 78.

18. On November 23, 2004, Ahcom faxed NFI a letter stating: "In absence of any shipping details regarding the above and after numerous requests for the same . . . we hereby give you three days final respite to furnish the details, failing which we will either buy them against you or proceed to arbitration under Waren-Verein Arbitration." Pl.'s Ex. 85.

19. On November 26, 2004, Hacking sent Mr. Smeding an email demanding assurances that performance would be forthcoming. Pl.'s Ex. 86.

20. On November 29, 2004, Ahcom's attorney sent NFI a letter requesting further assurances that the alleged contracts would be performed. Pl.'s Ex. 78.

21. Mr. Smeding sent Hacking an email on November 29, 2004, stating in pertinent part: "ANY DISPUTE WE MAY HAVE REGARDING THE OCTOBER SHIPMENTS OF THE ALMONDS CAN BE SETTLED AS YOU HAVE ALREADY INDICATED WITH ARBITRATION." Id.

22. NFI did not deliver any of the almonds called for in the disputed transactions. RT 36:11-13 (AH).

23. Ahcom sustained $1,484,000 in damages from NFI's failure to deliver the almonds. RT 57:16-58:16 (AH); Pl.'s Ex. 104.

24. On November 30, 2004, Ahcom submitted the matter to arbitration before the Waren-Verein. On April 25, 2006, an arbitral panel at the Waren-Verein rendered judgment in favor of Ahcom and awarded $1,428,000 plus interest. Pl.'s Exs. 1-2 ("Waren-Verein Judgment") at 3.

25. NFI filed for bankruptcy in 2006. Pl.'s Ex. 102.

D. Alter Ego

26. Articles of Incorporation for NFI were filed on January 9, 1985. Defs.' Ex. 501.

27. Bylaws for NFI were signed on April 10, 1985. Defs.' Ex. 502.

28. Stock was issued to Mr. Smeding and Mrs. Smeding in return for a contribution to capital of $3,900. HS Dep. at 48:25-49:4.[5]

29. After their initial $3,900 capital contribution, the Smedings did not contribute any other funds to NFI. HS Dep. at 48:25-49:4.

30. Mr. Smeding is the president and treasurer of NFI and owns 5,000 of the corporation's 10,000 shares of stock. RT 285:3-22 (HS).

31. Mrs. Smeding is the vice president and secretary of NFI and owns 5,000 of the corporation's 10,000 total shares of stock. RT 285:3-22 (HS).

32. NFI operated for twenty-one years and completed more than $100 million in total sales. RT 280:15-19 (HS).

33. NFI and the Smedings used different attorneys. RT 278:7-9 (HS).

34. NFI and the Smedings had different telephone numbers. RT 278:5-6 (HS).

35. NFI and the Smedings always maintained separate bank accounts and did not commingle assets. RT 274:14-275:3, 277:17-

[5] Excerpts from the deposition of Mr. Smeding were read into the record.

278:2 (HS).

36. NFI has always maintained an office separate from the Smedings' residence. The offices were located on properties not owned by the Smedings and were rented by NFI. RT 273:19-274:13 (HS).

37. Over the years, NFI has had several employees, all of whom were paid with funds from NFI accounts. RT 275:17-276:4 (HS).

38. The Smedings borrowed money from NFI on one occasion to remodel their home. The amount was approximately $500,000. The loan was documented with a promissory note and reflected in NFI's corporate tax returns. The Smedings paid the loan back in full in approximately 2002. They also paid interest at a rate of six percent, which was the same rate that NFI was paying on its line of credit at the time. RT 279:11-280:14 (HS).

39. With the exception of an automobile designated for both personal and corporate use and the $500,000 loan, the Smedings have not used corporate assets for their own use or benefit. RT 276:5-277:5 (HS).

40. NFI carried liability insurance in the amount of $2,000,000. RT 277:9-13 (HS).

41. The Smedings have never held themselves out as liable for the debts of NFI. RT 278:10-12 (HS).

42. NFI conducted annual shareholders meetings. RT 258:23-259:1 (HS).

43. The minutes of NFI's shareholders meetings reflect business decisions taken and are typical of the minutes of a closely held corporation. RT 259:15-265:10 (HS); Defs.' Exs. 504-

527 ("NFI Shareholder Mtg. Mins.").

44. In May 2003, NFI obtained a $700,000 line of credit from Vintage Bank. The line of credit was secured by a Deed of Trust on a ranch property owned by the Smedings. Pl.'s Ex. 111. The bank documentation for the loan states: "The Smedings have used the Nuttery Farm over the years to help purchase real estate assets and grow their net worth." Id. at 2. Mr. Smeding testified that, besides drawing a salary from NFI, neither he nor his wife ever used NFI to acquire real estate. RT 272:18-21 (HS). The loan documents further state that the Smedings "borrowed from the company to meet their personal investment goals." Pl.'s Ex. 111 at 2. Mr. Smeding testified that this statement was false. RT 273:3-5 (HS).

E. Destruction of Evidence

45. NFI used a desktop computer during the course of its operations to store financial data and send email. HS Dep. at 16:2-22. Sometime after the filing of this action, the Smedings dumped the computer into a horse trailer they used to collect garbage. Id. at 17:1-25, 60:3-7. Mr. Smeding testified that no financial data would have remained on the computer because he deleted it over time, as outstanding bills were paid and payments due were received. Id. at 16:4-10, 17:8-12. Mr. Smeding also testified that all of the source information for any of the entries made on the computer had been produced during discovery. RT 306:2-4 (HS).

46. During Mr. Smeding's deposition, Plaintiff's counsel stated: "Well, I should tell you that I do want all documents relating to Nuttery Farms and all computer systems and all copies

of disks retained as the rules require." Defense counsel replied: "we'll make the trailer available to you." Plaintiff's counsel responded: "I don't want to go dumpster diving. I just want to see the records." Id. at 60:17-24.

47. Sometime after Mr. Smeding's deposition, Mr. Smeding disposed of the computer as part of "cleaning up the affairs after bankruptcy." RT 308:8-12, 310:14-15 (HS).

III. CONCLUSIONS OF LAW

A. Alter Ego

The issue of alter ego arises most often in the context of corporations which, like NFI, are closely held, family-owned entities. "There is no litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case." Mesler v. Bragg Mgmt. Co., 39 Cal. 2d 290, 300 (1985). "[T]he doctrine is essentially an equitable one and for that reason is particularly within the province of the trial court. Only general rules may be laid down for guidance." Assoc. Vendors, Inc. v. Oakland Meat Co., 210 Cal. App. 2d 825, 837 (Ct. App. 1962). The two general rules established by the California Supreme Court are: "(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow." Mesler, 39 Cal. 2d. at 300.

When applying these rules to particular cases, California courts have considered a variety of factors, including: commingling

of assets; diversion of corporate assets to personal use; whether the individual defendants held themselves out as personally liable for the debts of the corporation; whether the individual defendants acted in bad faith; whether the individual defendants entered into contracts with the intent to avoid performance by using the corporate entity as a shield against personal liability; whether the individuals and corporation used the same office; whether they employed the same attorney; whether the individuals used the corporation to procure labor, services and merchandise for another person or entity; whether the individuals failed to adequately capitalize the corporation; and whether the individuals failed to maintain minutes or adequate corporate records. Assoc. Vendors, 210 Cal. App. 2d at 838-840 (collecting cases).

Taking these factors into consideration, the Court finds that the Smedings are not the alter egos of NFI. The evidence at trial showed that NFI maintained offices separate from the Smedings' residence and not owned by the Smedings; the Smedings and NFI employed different attorneys; the Smedings did not hold themselves out as liable for the debts of NFI; NFI held bona fide shareholders' meetings annually and made legitimate business decisions at those meetings; and NFI and the Smedings maintained separate bank accounts and did not commingle funds. There is no evidence of disregard for corporate formalities or of fraudulent intent by the Smedings in forming NFI over twenty years ago.

Furthermore, while the Smedings did borrow money from NFI on one occasion, they properly documented the loan and paid it back in full, plus a fair rate of interest. These careful steps to structure the loan as an arms-length transaction demonstrate

respect for the separate corporate identity of NFI and a lack of intent to abuse the corporate form.

Plaintiffs' primary argument for alter ego liability is that NFI was undercapitalized, allowing the Smedings to unfairly shift all risk of loss to NFI's creditors. Whether this is true is a close question, as there is no bright-line test for deciding when a corporation is undercapitalized. Nevertheless, the Court finds that Plaintiff has not met its burden of proof on the issue. The Smedings made an initial capital contribution of $3,900 to NFI at its inception when expected sales were small. As the corporation's sales grew over time, the Smedings did not contribute more capital. Defendants' expert Stuart Harden testified that additional capital was unnecessary because NFI employed a business strategy of entering into matching forward contracts to buy and sell a commodity, thereby mitigating the company's exposure. RT 360:13-19 (Testimony of Stuart Harden (hereinafter "SH")). Harden further testified that, in the event that a supplier might default on a purchase contract and leave NFI exposed on a corresponding sales contract, paid-in capital was not necessarily required to protect NFI's creditors. Rather, NFI could reasonably rely on its line of credit or its ability to sell other commodities to generate the cash required to cover its sales contracts. RT 362:3-363:16 (SH).

Plaintiff contends that NFI dramatically shifted its business strategy in 2004 by entering into a large number of sales contracts with the knowledge that it could not offset these liabilities with corresponding purchase contracts. Plaintiff offered expert testimony from Hacking, in which Hacking opined that NFI pursued a short-sale strategy beginning in 2004. RT 47:14-25 (AH). Under

this strategy, NFI entered into far more sales contracts in 2004 than in 2003 and did not enter into corresponding purchase contracts. Id. This strategy amounted to placing a bet that the price of almonds would decrease before performance on the purchase contracts became due, which would allow NFI to buy the almonds it had already sold at a price below the sale price. Id.

Cross-examination revealed numerous errors in Hacking's calculations, and Hacking conceded that he had not considered all of NFI's contracts in preparing his assessment. RT 105:21-113:24 (AH). Harden's testimony that NFI did not require higher capitalization is supported by the fact that NFI operated successfully for nearly twenty years with adequate cash flow to cover its liabilities. The Court finds Harden's testimony more persuasive on this issue. The Court thus finds that a preponderance of the evidence does not support Plaintiff's theory that NFI deliberately pursued a short-sale strategy without adequate resources to cover its sales contracts in the event that the prices of almonds increased.

Additionally, the Court finds that, even if NFI were undercapitalized, piercing the corporate veil would not be justified in this case. Undercapitalization is but one of the factors to consider in an alter ego inquiry. Assoc. Vendors, 210 Cal. App. 2d at 838-840. As noted supra, the majority of factors pertinent to the alter ego inquiry weigh against piercing the veil in this case.

Lastly, the Court cannot conclude that an inequitable result will flow from not imposing alter ego liability in this case. Ahcom knew that it was dealing with a corporation. RT 82:10-12

(AH). Ahcom had engaged in millions of dollars of business with NFI prior to NFI's default. Findings of Fact ("FF") ¶ 5. The Smedings never represented to Ahcom that they were personally liable for the debts of NFI. RT 99:21-23 (AH). Ahcom does not contend that it relied on the Smedings' personal assets in doing business with NFI. The fact that a creditor will remain unsatisfied if the corporate veil is not pierced does not in itself constitute an inequitable result that compels a finding of alter ego liability. As set forth in Associated Vendors:

> Certainly it is not sufficient to merely show that a creditor will remain unsatisfied if the corporate veil is not pierced, and thus set up such an unhappy circumstance as proof of an "inequitable result." In almost every instance where a plaintiff has attempted to invoke the doctrine, he is an unsatisfied creditor.

210 Cal. App. 2d at 842.

Plaintiff argues that not piercing the veil will produce an inequitable result because Defendants placed a bet on a volatile commodity market knowing they did not have the money necessary to pay the debt if their bet proved wrong. The Court finds that a preponderance of the evidence does not support this contention.

B. Agreement to Arbitrate and Breach of Contract

Plaintiff's second claim for confirmation of the arbitration award and third claim for breach of contract necessarily require a finding of alter ego liability in order for Plaintiff to prevail. As the FAC makes clear, Plaintiff seeks to confirm the arbitration award against the Smedings as individuals on an alter ego theory. FAC ¶¶ 13-14. Likewise, Plaintiff seeks to hold the Smedings liable for the alleged breach of contracts by NFI on an alter ego theory. FAC ¶ 16.

Because the Court finds that the Smedings are not the alter egos of NFI, it finds that the arbitration award is not enforceable against the Smedings, and the Smedings are not liable for any alleged breach of contract by NFI. Because NFI is not a party to this suit, the Court is without jurisdiction to address whether the arbitration agreement is enforceable against NFI or whether NFI is liable for breach of contract.

C. Destruction of NFI's Computer

Plaintiff argues that Defendants spoliated evidence by disposing of NFI's office computer. Pl.'s Tr. Br. at 9. Plaintiff asks the Court to impose default judgment, shift the burden of proof to Defendants, or impose an adverse inference against Defendants because of their conduct. Id. at 13. The Court finds that Defendants' actions violated the Federal Rules of Civil Procedure and that some sanction is therefore warranted. However, based on the evidence presented at trial, the Court finds that Defendants' conduct, while troubling, is highly unlikely to have materially impacted the outcome of this case. Accordingly, the Court finds that the severe sanctions requested by Plaintiff are unwarranted and imposes a monetary sanction instead.

The trial court has broad discretion to fashion, on a case-by-case basis, an appropriate sanction for spoliation. Id. However, sanctions resulting in dismissal or entry of default judgment are authorized only in "extreme circumstances" where the spoliation is "due to willfulness, bad faith, or fault" and results in such unfair prejudice that no lesser remedy can cure the harm. Kahaluu Constr., 857 F.2d at 603.

Spoliation of evidence occurs when a party (1) destroys evidence after receiving notice that the evidence was potentially relevant to litigation; and, in so doing, (2) impairs the non-spoiling party's ability to go to trial, or threatens to interfere with the rightful decision of the case. United States ex rel. Wiltec Guam, Inc. v. Kahaluu Constr. Co., 857 F.2d 600, 604 (9th Cir. 1988); United States v. Kitsap Physicians Svc., 314 F.3d 995, 1001 (9th Cir. 2002). Sanctions for spoliation of evidence may be imposed under the court's inherent powers, or alternatively, if the spoliation violates a court order, under Federal Rule of Civil Procedure 37(b). See Unigard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp., 982 F.2d 363, 367-68 (9th Cir. 1992).

Here, Defendants' disposal of the computer unquestionably constitutes spoliation of evidence. Mr. Smeding testified that he used the computer to keep track of NFI's accounts received and accounts payable. FF ¶ 48. Such financial information is potentially relevant to aspects of the alter ego inquiry, such as whether NFI and the Smedings commingled assets and whether the Smedings diverted corporate assets to their personal use. Mr. Smeding had notice of the relevance of this information from Plaintiff's discovery requests and specifically from Plaintiff's counsel's remarks at Mr. Smeding's deposition. FF ¶ 49. Nevertheless, Mr. Smeding disposed of the computer in the course of "cleaning up the affairs after bankruptcy." FF ¶ 50.

Defendants seek to justify their actions by noting that Plaintiff never filed a motion to compel production of the computer. However, Defendants' obligation to produce potentially relevant information is not contingent on Plaintiff filing a motion

to compel them to do so. Defendants' actions plainly violated their discovery obligations under Federal Rule of Civil Procedure 26. The Court therefore finds the imposition of sanctions necessary to preserve the integrity of the judicial process.

Nevertheless, the sanctions Plaintiff seeks are excessive in this case. Despite Defendants' reprehensible failure to produce the computer, Plaintiff had access to extensive information about the finances of the Smedings and of NFI, including personal and corporate bank account statements, personal and corporate tax returns, and loan documentation. The availability of secondary sources of evidence to compensate for the despoiled evidence lessens any risk of prejudice at trial. See Med. Lab. Mgmt. Consultants v. Am. Broad. Cos., Inc., 306 F.3d 806, 825 (9th Cir. 2002). The Court finds that the secondary sources of financial information available to Plaintiff lessened the likely prejudice to Plaintiff's case from the destruction of NFI's computer.

Courts have held that a party failing to preserve relevant evidence may be subject to monetary sanctions where a request for more drastic sanctions is denied. See Kopitar v. Nationwide Mut. Ins. Co., 266 F.R.D. 493, 501 (E.D. Cal. 2010) (awarding fees and costs incurred in drafting motion for spoliation sanctions). Pursuant to its inherent authority, the Court finds that monetary sanctions are warranted in this case. The Court awards $4500 to Plaintiff for its efforts pursuing this issue and raising it with the Court.

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IV. CONCLUSION

For the foregoing reasons, the Court enters judgment in favor of Defendants Hendrik Smeding and Lettie Smeding and against Plaintiff Ahcom, Ltd., on Plaintiff's claims for alter ego, confirmation of arbitration award, and breach of contract.

The Court ORDERS Defendants to pay Plaintiff $4500 as a monetary sanction for Defendants' failure to preserve the computer.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: August _8_, 2011

UNITED STATES DISTRICT JUDGE